

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Schenley Industries, Inc. and The Buckingham Corp., U.S. District Court, S.D. New York, 1971 Trade Cases ¶73,490, (Mar. 29, 1971)

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United States v. Schenley Industries, Inc. and The Buckingham Corp.

1971 Trade Cases ¶73,490. U.S. District Court, S.D. New York. Civil Action No. 66 Civ. 1175. Entered March 29, 1971. Case No. 1897, Antitrust Division, Department of Justice.

Clayton Act

Acquisition of Competitor—Whiskey Distributor—Consent Decree.—A distiller, importer and distributor of distilled spirits was required by a consent decree to sell its stock ownership in a distributor of a competing brand of Scotch whiskey that it had acquired. The firm was enjoined from acquiring an interest in any company that produces or imports and sells Scotch whiskey; in the United States and from acquiring a license to produce or import and sell Scotch whiskey in the United States from another company for a period of ten years, 'without prior approval. The decree does not affect the firm's license to import and sell any brand of Scotch whiskey produced by its present licensor or the right of its wholesale outlets to sell any brand or brands of Scotch whiskey.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Norman H. Seidler, Louis Perlmutter, Charles F. B. McAleer, and Stephen M. Behar, Attys., Dept. of Justice.

For defendant: Leon Silverman, of Strasser, Spiegelberg, Fried & Frank, for Schenley Industries, Inc.

Final Judgment

COOPER, D. J.: Plaintiff having filed its complaint herein on April 25, 1966 and defendant Schenley Industries, Inc. having appeared, and plaintiff and defendant Schenley by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without admission by any of the parties hereto in respect of any such issue,

Now, Therefore, before any testimony has been taken, and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant Schenley under Section 7 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act.

II

[Definitions]

As used in this Final Judgment:

- (A) "Schenley" shall mean the defendant Schenley Industries, Inc. and each of its parents, subsidiaries and affiliates or any of them.
- (B) "Company" shall mean any individual, corporation, partnership, or other business or legal entity.
- (C) "United States" shall mean the United States of America and the District of Columbia.

(D) "Produce" shall mean to manufacture, distill, bottle, or rectify Scotch whiskey.

(E) "Import" shall mean to bring or cause to be brought Scotch whiskey into the United States.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Schenley shall also apply to its successors, officers, directors, employees, agents and all persons in active concert or participation with any of them, who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Divestiture*]

On or before June 30, 1972 Schenley shall divest itself of all its right, title and interest in The Buckingham Corporation by sale in a manner and to a purchaser approved by the plaintiff.

V

[*Future Activities*]

(A) For a period of ten years from the date of entry of this Final Judgment, Schenley is enjoined and restrained from:

(1) Acquiring directly or indirectly any stock, assets, or other financial interest in any company which holds or controls, directly or indirectly, the right to produce and sell or the right to import and sell any brand of Scotch whiskey in the United States, provided, however, that nothing contained in this subparagraph shall prevent Schenley from acquiring stock, assets or other financial interest in Seager-Evans and Co., Limited, a British subsidiary of Schenley, or any of its subsidiaries.

(2) Obtaining from any, other company the right to import and sell, or the right to produce and sell any brand of Scotch whiskey in the United States, provided, however, that nothing in this subparagraph shall prevent Schenley from obtaining the right to or continuing to sell, produce or import any brand of Scotch whiskey in the United States presently or hereafter produced by or for John Dewar & Sons Limited.

(B) If at any time prior to the expiration of the 10-year period referred to in Section V(A), Schenley wishes to make an acquisition or enter an agreement to obtain any right that would be prohibited under the provisions of Section V(A)(1) and (2), Schenley may submit in writing a full disclosure of the facts with respect to such proposed acquisition or agreement and the reason therefor to the plaintiff for consideration. If the plaintiff shall not object to the proposed acquisition or agreement within thirty (30) days after receipt of such request, such acquisition shall not be deemed to be in violation of this Final Judgment. If the plaintiff should object thereto, defendant Schenley may apply to the Court upon due notice to the plaintiff, for permission to make such acquisition or agreement, which may be granted upon a finding of the Court that the effect of such acquisition or agreement will not be contrary to the purposes of this Final Judgment.

VI

[*Sales by Wholesale Outlets*]

The provisions of this judgment shall not limit the rights of Schenley owned wholesale outlets to sell any brand or brands of Scotch whiskey.

VII

[*Compliance and Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Assistant Attorney

General in charge of the Antitrust Division, and on reasonable notice to Schenley made to its principal office, be permitted, subject to any legally recognized privilege:

(A) access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding the subject matters contained in this Final Judgment, and

(B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant regarding any such matters and such officers or employees may have counsel present.

Upon such written request, the defendant shall submit such reports in writing with respect to any such matters as may from time to time be requested.

No information obtained by the means provided for in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of a legal proceeding to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for construction, carrying out, modification, termination or enforcement of or compliance with the provisions of this Final Judgment and for the punishment of violations thereof.